IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

-

WRIT PETITION NO : 7150 of 2004

Between:

Vijay Kumar Agarwal, s/o Shyam Sunder Agarwal,
R/o Paloncha, Khammam District.

..... PETITIONER

AND

1 The Chief Commissioner, Land Administration, Revenue Department, Hyderabad.
2 The District Collector, Khammam District, Khammam.
3 Indian Oil Corporation Limited, Divisional Office, G.V.R. Towers, 3rd Floor, Bharathi Nagar, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring proceedings of the 2nd respondent vide Rc.No. C2/776/04, dated 23-3-2004 as illegal, arbitrary and discriminatory and set aside the same and consequently direct the 2nd respondent to issue no objection certificate to the Petitioner for establishment of Retail out let to market the Petroleum Products of the 3rd respondent Corporation in Sy.No. 406/E of Paloncha Village, Khammam District,

Counsel for the Petitioner : MR.E.MADAN MOHAN RAO

Counsel for Respondents 1 & 2 : G.P. FOR REVENUE

Counsel for Respondent No.3 : MR.P.V.SANJAY KUMAR

The Court made the following :

THE HONOURABLE SRI JUSTICE

R.SUBASH REDDY

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WRIT PETITION NO.7150 of 2004

ORDER:

This writ petition is filed seeking Writ of Mandamus, to declare the proceedings Rc.No.C2/776/2004, dated 23.03.2004 of the second respondent-District Collector, Khammam, as illegal and arbitrary and consequently, to direct the second respondent to issue No Objection Certificate to the petitioner for establishment of a retail outlet to market the petroleum products of the third respondent- Corporation in Sy.No.406/E of Paloncha Village, Khammam District.

The necessary facts, in brief, are: that the third respondent-Indian Oil Corporation Limited, a Government of India undertaking, issued notification inviting applications to set up a retail outlet to sell products of MS (petroleum) and HSD within the limits of Paloncha Village of Khammam district. In response to the said notification, the petitioner, who owns land in Sy.No.406/E of

Paloncha village, applied for the dealership of the said retail outlet. On scrutiny of applications, the petitioner was selected. Though the petitioner himself is the owner and pattadar of total land admeasuring Ac.7.00 cents in Sy.No.406/E of Paloncha Village, but, as per the procedure in vogue, he has executed registered lease deed in favour of the third respondent-Corporation transferring an extent of 2,000 square yards of land in the said survey number for the purpose of locating retail outlet. Consequently, on behalf of the third respondent-Corporation, the Senior Divisional Sales Manager has applied to the second respondent for issuance of No Objection Certificate as required under Rule 144 of the Petroleum Rules, 2002 (for brevity “the Petroleum Rules”). Initially, pursuant to such application, the District Collector, Khammam District, in the proceedings Rc.No.C2/4571/2003, dated 13.01.2004, rejected the request of the petitioner, stating that the land in Sy.No.406/E is part and parcel of notified village under the A.P. Scheduled Areas Land Transfer Regulation. I of 1959; as such, the transfer itself is illegal and contrary to the A.P. Scheduled Areas Land Transfer Regulation. I of 1959, as amended by Regulation II of 1970. A communication was sent to that effect to the Office of the third respondent-Corporation. As against the same, the petitioner approached the Chief Commissioner of Land Administration, Hyderabad, and the said appellate authority passed an order dated 18.03.2004, setting aside the proceedings Rc.No.C2/4571/2003 dated 13-1-2004 and directed the second respondent to reconsider the request of the petitioner for issuance of No Objection Certificate, by examining correct status of the village. Consequently, the present impugned

orders are passed by the second Respondent-District Collector in proceedings Rc.No.C2/776/2004, dated 23.03.2004, rejecting the request of the petitioner, on the ground, that the proposed site in Sy.No. 406/E of Paloncha Village is in scheduled area i.e., Samsthan Paloncha and same is covered by Presidential Notification dated 7-12-1950.

In the writ petition, it is the case of the petitioner that there are no valid grounds in rejecting the request of the petitioner for grant of No Objection Certificate as required under Rule 144 of the Petroleum Rules. As per the petitioner, the land in Sy.No.406/E of Paloncha village is a part of revenue village and the said revenue village is not a notified village as per the Presidential notification covering the scheduled areas of Khammam District. It is also the case of the petitioner that in the very same village, several No Objection Certificates were issued by the District Collector and Mandal Revenue Officer, either for setting up retail outlets, or, for transfer of the lands. But coming to the case of the petitioner, his request is rejected in discriminatory manner. Further, it is stated, the second respondent-District Collector has exceeded scope of enquiry under Rule 144 of the Petroleum Rules, and, rejected his request. In the material papers annexed to the writ petition, the petitioner has filed several No Objection Certificates issued by the Joint Collector, Khammam, and the Mandal Revenue Officer, Paloncha, expressing no objection either for transfer of lands or for establishment of retail outlets in the very same Paloncha village of Khammam District.

In the counter-affidavit filed on behalf of the second respondent, it is stated that

Paloncha Village is in two parts, namely Samsthan Paloncha and Paloncha (Khalsa) and it is stated that Khalsa is covered by Sy.Nos.1 to 136 and Samsthan Paloncha is covered by Sy.Nos.1 to 999. It is the case of the respondents that so far Paloncha Khalsa is concerned, the same is not a notified village, but, Paloncha Samsthan is a notified village as per the Presidential Notification No.1031, dated 07.12.1950. It is further stated that the land transfer regulations are in force, and, as per the said Presidential Order, transfers are prohibited in the scheduled areas from tribals to non-tribals with effect from 01.12.1963 and the same is also extended, prohibiting *inter se* non-tribals also, with effect from 03.02.1970. As such, it is the case of the respondents that the request for issuance of No Objection Certificate is rejected, as much as the very transfer is in violation of the provisions of the A.P. Scheduled Areas Land Transfer Regulation I of 1959, as amended by Regulation No.II of 1970.

Heard Sri E.Madan Mohan Rao, the learned counsel appearing for the petitioner and the learned Government Pleader for Social Welfare.

It is submitted by Sri E.Madan Mohan Rao, the learned counsel appearing for the writ petitioner, that the rejection for grant of No Objection Certificate under Rule 144 of the Petroleum Rules by the second respondent is, exceeding the scope of enquiry under the said Rules. It is the case of the learned Counsel that the scope of enquiry is confined to only to verify suitability of the proposed site having regard to the nature of commodity, which is an inflammable one, *vis-à-vis* the neighbourhood. But, in this case, the grounds mentioned in the

rejection order are untenable and are not valid grounds for rejecting the request of the petitioner. It is further submitted that in reality, there is no transfer of property in favour of the third party-Oil Corporation and lease deed is executed as insisted by the second respondent, to enclose the same along with the application for grant of No Objection Certificate. Inasmuch as the petitioner is the owner of the land, the third respondent will install the equipment in the proposed site and the petitioner will operate on his own land. It is further submitted that in view of the abolition of *'Jagirs'*, there is no separate village, by name, Samsthan Paloncha and there is only one revenue village, by name, Paloncha and the same is out side purview of the land transfer regulations. Lastly, it is submitted by the learned Counsel for the petitioner that, for similarly situated persons, earlier No Objection Certificates were issued either for establishment of retail outlets or for transfer of lands in favour of third parties. But, so far petitioner is concerned, his request was rejected on untenable grounds.

On the other hand, it is submitted by the learned Government Pleader for Social Welfare, that as per the Presidential Notification No.1031, dated 07.12.1950, Samsthan Paloncha is included in the scheduled area, and, Sy.No.406/E is part and parcel of Samsthan Paloncha; as such, transfer itself is illegal. In that view of the matter, the second respondent has correctly rejected the request of the petitioner for issuance of No Objection Certificate. It is further submitted that for all purposes, two different sets of records are maintained for Samsthan Paloncha and Paloncha village (Khalsa) and inasmuch as the land in

Sy.No.406/E is in Samsthan Paloncha, and, in view of the prohibition of transfers, as per the A.P. Scheduled Areas Land Transfer Regulation I 1959, as amended by Regulation II of 1970, the transfer itself is void, and, therefore, No Objection Certificate cannot be issued.

With reference to the above said submissions, at the out set, it is pertinent to notice that No Objection Certificate is required in the manner provided, as per the provisions of the Petroleum Rules 2002, framed under the Petroleum Act, 1934. From the objects and reasons of the Petroleum Act, 1934, the said enactment is made with an aim and object to consolidate and amend the laws relating to import, transport, storage, production, refining and blending of petroleum and other inflammable substances. As per the provisions under Section-3 of Chapter-I of the Petroleum Act, 1934, no one shall import, transport or store any petroleum, save in accordance with the rules made under Section-4. Chapter-VII of the Petroleum Act, 1934, deals with licences and Rule-141 deals with the provision for grant of licences. Whereas Rule-143 provides for making applications for grant of licences and Rule-144 is a provision, which enables the District authority to enquire and issue No Objection Certificate for the site proposed. From the above background of the provisions under the Petroleum Act, 1934,and, rules made there under, it is clear that the scope of enquiry by the District authority is limited with regard to suitability of the site proposed for the purpose of storage, licences, etc., having regard to the inflammable nature of products, *vis-à-vis* the neighbourhood. In

that view of the matter, while considering the application under Rule-144 of the Petroleum Rules, 2002, it is not open for the District authority to examine the nature of title and possession of the land for issuance of No Objection Certificate.

Further, in this case, it is to be seen, that the petitioner himself is the owner of the land in Sy.No. 406/E of Paloncha Village, admeasuring Ac.7.00 cents. Pursuant to the notification issued by the third respondent-Oil Corporation, the petitioner has offered himself, as one of the applicants, to operate proposed retail outlet and as per the procedure, he has executed the lease deed for a portion of the land, admeasuring 2000 square yards, where the proposed outlet is to be established. So far scheduled areas are concerned, transfers are regulated as per the provisions of the A.P. Scheduled Areas Land Transfer Regulation I of 1959 and its amendment made in the year 1970. As per the said Regulations, if any transfer effected is not in consonance with the said Regulations, the competent authority as notified under the said Regulations, has power to enquire into the matter and declare such transfer as illegal. But, in the instant case, there is no such adjudication by the competent authority; in that view of the matter, while dealing with the application under Rule 144 of the Petroleum Rules, the second respondent-District Collector cannot reject the claim of the petitioner for grant of No Objection Certificate, for setting-up proposed retail outlet, on the ground that there is prohibition of transfer in the

scheduled areas and the land in question falls in such Scheduled Area. Even as per the Presidential Notification, relied on by the respondents, though some villages of erstwhile Paloncha were notified under the provisions of the A.P. Scheduled Areas Land Transfer Regulation I of 1959, but, Paloncha as such was excluded from scheduled area. In that view of the matter also, and, in view of abolition of Jagirs, it cannot be said that Samsthan Paloncha is continued in the notified scheduled areas. From the material papers filed by the petitioner along with Writ Petition, it is to be seen, several times reports were submitted by the revenue authorities, wherein they have clearly mentioned that Paloncha village is outside the notified scheduled area and No Objection Certificates were issued to similarly situated persons either for transfer of lands in favour of third parties, or, for establishment of retail outlets. In that view of the matter, there is no valid reason or justification to deprive the similar benefit to the petitioner, by refusing No Objection certificate as required under Rule 144 of the Petroleum Rules. Further, as I have already held that there is no adjudication about validity of the transfer by competent authority as required under the A.P.Scheduled Areas Land Transfer Regulation I of 1959, in that view of the matter also, the only objection mentioned in the impugned proceedings cannot be sustained. In any event, the objection raised in the impugned order is beyond the scope of enquiry as contemplated under Rule 144 of the Petroleum Rules, framed under the Petroleum Act, 1934. As such, the impugned order is liable to be set aside.

Accordingly the Writ Petition is allowed and the impugned order of

rejection in proceedings Rc.No.C2/776/2004, dated 23.03.2004 is set aside. Consequently, the second respondent-District Collector is directed to issue No Objection Certificate to the petitioner as prayed for, within a period of one month from the date of receipt of this order. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dated: ----------December, 2004.

Msnr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on the Twenty Seventh day of December, Two Thousand and Four.

REGISTRAR

To

1 The Chief Commissioner, Land Administration, Revenue Department, Hyderabad.
2 The District Collector, Khammam District, Khammam.
3 Indian Oil Corporation Limited, Divisional Office, G.V.R. Towers, 3rd Floor, Bharathi Nagar, Vijayawada.

4 Two CCs to the G.P. for Revenue, High Court Buildings, Hyderabad.

5 Two CD copies.